Supreme Court, U.S.
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OFFICE OF THE CLERK

No. 91-

In the
Supreme Court of the United States

OCTOBER TERM, 1991

LEO POCCHIARI,
PETITIONER,

v.

BOARD OF REGENTS, ET AL.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT.

PETITION FOR WRIT OF CERTIORARI.

LEO POCCHIARI,
Pro Se,
92 Brown Street,
Pawtucket, Rhode Island 02860.
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BATEMAN & SLADE, INC BOSTON, MASSACHUSETTS

Question Presented for Review.

Whether the Rhode Island Superior Court and Rhode Island Supreme Court have the legal authority to ignore the United States Constitution, Rhode Island Constitution, and State and Federal laws, thereby violating the rights of a citizen for a fair trial and due process?

List of Parties.

Peter McWalters — Commissioner of Education
State Department of Education
22 Hayes Street
Providence, Rhode Island 02908

Troy Earhart — Commissioner of Education
(Retired)
25 Fort Hill Road
Bristol, Rhode Island 02809

Donald Driscoll — Assistant Commissioner of Education
(Retired)
Snake Hill Road
Harmony, Rhode Island 02829

Peter Blackwell — School Principal
Al Lake — Audiologist
Marie Packer — Clerk
Rhode Island School for the Deaf
Corliss Park
Providence, Rhode Island 02908

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CONSTITUTION, STATUTES, COURT RULES.

Constitutional Provisions:

United States Constitution

Fifth amendment i, 2, 7
Fourteenth amendment i, 2, 7

Rhode Island Constitution

Article one, section two i, 2, 3, 7

Statutory Provisions:

United States Code

Handicapped Children's Act
20 U.S.C. 1401-1485 3, 4

Rhode island General Laws

Default judgment 10-16-7 1, 2, 4, 6
Government tort liability Act 9-31-1 4
Arbitration act 10-3-2 5
Teacher certification law 16-11-1 3
Licensing of audiologists 5-48-6B 3
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Rules of Civil Procedure (State and Federal)

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THE UNITED STATES SUPREME COURT.

PETITION FOR WRIT OF CERTIORARI.

The Petitioner, Leo Pocchiari, respectfully prays for a writ of certiorari to review the judgment and opinion of the Rhode Island Supreme Court regarding the question of federal and state constitution, statutes, and court rules violations.

Unpublished Opinion of State Supreme Court.

This case was heard in Superior Court on April 25, 1990. It was dismissed in favor of the defendant without regard for the fact that the defendant failed to make an appearance in court. The case was appealed to the State Supreme Court. Subsequently a motion for default and entry of judgment was

filed on February 20, 1991. Oral arguments were heard on October 15, 1991 which affirmed the decision of the Superior Court (10/23/91). A motion to re-argue was filed on November 20, 1991. It was denied on April 16, 1992.

Jurisdiction.

This case was an Exparte trial. The defendant and commissioner of education, Dr. Troy Earhart (now retired) failed to make an appearance even though he was duly serviced by the Court. Moreover, the petitioner was denied the opportunity to call any witnesses or to submit any documented evidence. In addition, full discovery was denied the petitioner.

The case was dismissed in favor of the respondent in violation of the Untied States and Rhode Island Constitutions which guarantee due process and a fair trial. It also violates numerous state and federal laws as well as various rules of civil procedure and rules of evidence.

Constitutional Provisions.

It is the position of the petitioner that he was denied a fair trial and due process under the fifth and fourteenth amendments of the United States which states:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal Protection of the law.

The Superior Court and State Supreme Court also violated the petitioner's right to due process under article one, section two of the Rhode Island Constitution which states:

> No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the law.

Statement of the Case.

The petitioner was employed at the Rhode Island School for the Deaf on September 1970. He was discharged on January 18, 1978. The case went to arbitration and subsequently to the Superior Court. The court agreed that the discharge was without just cause.

In fact, Judge Gianini commented in the preceeding Superior Court case following arbitration that . . . "Mr. Pocchiari was not dealth with fairly and that if obstacles could be placed, they certainly were placed" . . . (12/3/80). He went on to say that "This matter appeared to contain none of the usual elements of a discharge case, it was overly vindictive, it bore too much resemblance to a vendetta." (12/9/80)

The petitioner was re-instated in 1981 and was immediately confronted with a campaign of hostility, abuse, and harassment. (1) The petitioner is a licensing audiologist. He is not a certified teacher but was forced to teach deaf and handicapped children for 22 periods a week for one year. Not only did the School for the Deaf break the law but they forced the petitioner to break the law, (2) The principal hired an unlicensed audiology student for five years. His primary duties were to harass the petitioner (3) The attorney at the time, telephoned the Social Security office, without a signed release, to ascertain

medical information on the cardiac condition of the petitioner. (4) The school principal placed a hidden microphone in a conference room without the petitioner's knowledge in order to entrap him. (5) The school principal adopted a defective computer program over the strong objections of the petitioner which failed to incorporate many important audiological information. The result was that the petitioner was forced to send out many false audiological test reports on deaf and handicapped children to doctors, hospitals, clinics, and school districts under his signature for a period of nearly two (2) years.

As a matter of fact, the school principal and assistant Commissioner of Education, inflicted a massive array of abuse on the petitioner in order to obtain his resignation. Many of these abuses hurt the children at the School for the Deaf. A further example is when the school principal and assistant commissioner placed a teacher *inside* the audiological test suite. The result of this action was that whenever the teacher used the telphone, typewriter or held a conference, it would invalidate the audiological testing that the petitioner-audiologist was conducting on deaf and handicapped children. It is very clear to the petitioner that many of these actions at the School for The deaf were designed to hurt the petitioner without regard to the damage that was being done to the deaf and handicapped children in violation of state and federal laws.

These abuses were reported to the American Federation of Teachers, Local 2012, Providence, Rhode Island 02908 and many other parties on a regular basis but it was a total waste of time.

Therefore, the petitioner filed a lawsuit under the Government Tort Liability Act on April, 1985. The case went to trial in April, 1990. It was an Exparte trial. The defendant, Dr. Earhart, never made an appearance though he was properly serviced by the Court. This point was promptly raised by the petitioner at the trial (A. 1a, lines 7-12).

Default judgments are ordinarily proper when the defendant fails to appear and has been duly serviced by the court (R.I.G.L. 10-17-6). In *Diamond* v. *Morrell*, 57 R.I. 477; 190 A 683, the defendant failed to appear when trial was called and the case was declared in default. In a similar case *Sahagian* v. *Superior Court*, 47 R.I. 85; 129 A 813. The defendant failed to appear on the trial date and the case was defaulted.

A further reference is made to *Brock* v. *Unique Racquetball and Health Clubs, Inc.*, 786 F.2d 61, wherein the attorney stated to the court that he "may" or "may not" appear for trial. On date trial was resumed, the attorney failed to appear and case was placed in default.

The question was also raised in Court whether the complaint should have gone to arbitration rather than to court. It was the petitioner's position that the union contract was silent on this issue. The petitioner states on page 20, lines 22-25 (A. 1a) "It (contract) doesn't say you have to take it to arbitration, does it?"

In a correlary point, it should be pointed out that the Rhode Island Arbitration act states that the provisions of a union contract must be "clearly expressed" R.I.G.L. (10-3-2).

Perhaps a more forceful argument for referring this case to the Courts rather than to arbitration was based on the many state laws that were violated (emphasis added).

A further argument for referring the case to Court was cited in *Dunn & Sons, Inc.* v. *Paragon Homes of New England, Inc.*, 110 N.H. 215, 265 A.2d 5:

> Determination of whether action is on contract or in tort is not controlled by the form of the action but by its substance.

Thus, it was the petitioner's position that it was proper to file a lawsuit against the Board of Regents.

The unpublished State Supreme Court opinion stated, "Pocchiari acknowleged that he did not have a single witness who could testify about his reputation . . .". This statement is simply untrue. The petitioner stated at various points that he did not have a parent, child, or cardiologist to testify but several witnesses were to be called including the petitioner but the court denied the petitioner the opportunity to testify under oath in his own behalf or to call his witnesses. These included Dr. Troy Earhart, Commissioner, Donald Driscoll, Assistant Commissioner, Peter Blackwell, School Principal, Al Lake, Audiologist, and Marie Packer, Clerk. The trial judge formed an incorrect legal conclusion when he stated that the petitioner could not bring in a witness. This was denied by the petitioner wherein he stated, "That is not my judgment, your honor" page 35, lines 1-11 (A. 1a).

In addition, the petitioner was denied the opportunity to present any documented evidence to the Court. This was evident when the trial judge stated, "I haven't even looked at your documentation . . ." page 38, lines 7-15 (A. 2a).

The petitioner has a right to be heard. Judicial notice should be used with great care and discretion. This was a major issue in *United States* v. *Garcia*, (John)", 672 F.2d 1349 wherein the defendant was deprived of the right to be heard.

Moreover, the petitioner was denied full discovery. After six years of effort, the respondents refused to release many documents the petitioner was entitled to receive despite many complaints the petitioner lodged to the Court.

The petitioner has a right to full discovery. In *Coors Co.* v. *Movement Against Racism and the Klan*, 777 F.2d 1538, the Trial Court crafted an order with great care for compliance to discovery in a first amendment case in order to facilitate a fair trial.

In a final reference to the unpublished State Supreme Court opinion, it is noteworthy that several significant points were

ignored or not properly reported: (1) The trial was an Exparte Trial, (2) The petitioner was denied the opportunity to call witnesses, (3) The petitioner was denied the opportunity to present any documentary evidence, (4) The petitioner was denied full discovery.

It is difficult to understand why the State Supreme Court chose to ignore or fail to mention these points in its opinion.

Reason for Granting Writ.

The United States and State Constitutions guarantees due process to every citizen. In the petitioner's view this did not happen in the present case. Many serious errors occurred in this case which prevented the petitioner from receiving a fair trial.

The petitioner trusts that this Honorable Court will grant a writ of certiorari, because when one citizen's rights are violated, every citizen's rights are violated.

Conclusion.

Wherefore, it is the position of the petitioner that his constitutional and statutory rights were violated and that the respondents should be liable for the full amount of the complaint ($100,000.), plus costs, plus loss of earnings arising from early retirement between the ages of 62 and 65.

Prepared by the petitioner.

Respectfully submitted,

LEO POCCHIARI,
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92 Brown Street,
Pawtucket, Rhode Island 02860.
(401) 723-8696

Appendix A.

Superior Court Transcripts

WEDNESDAY, APRIL 25, 1990

MORNING SESSION

Page one, lines 7-12

MR. POCCHIARI: As a matter of fact, that was one of the points I wanted to raise, Your Honor, that *Dr. Airhart* is the Commissioner of Education and is the spokesman for the Board of Regents, and I anticipated and requested that he be present here this morning, and he's not.

Page 20, lines 22-25

MR. POCCHIARI: It doesn't say you have to take it to arbitration, does it?

THE COURT: That's what I'm asking. *I don't know the answer.*

Page 35, lines 1-11

THE COURT: Can you *bring someone* in who is able to testify that, because of this criticism, his or her opinion of you and your reputation has changed? If you can't do that, you can't establish the preliminary element which is alleged in your complaint. I gather from your silence that--and from the comments you made a little earlier, that you can't do that.

MR. POCCHIARI: *That's not my judgment*, Your Honor.

THE COURT: Pardon?

MR. POCCHIARI: That is not my judgment, Your Honor.

Page 38, lines 7-15

THE COURT: But you see, that arbitration ended *favorable* in your behalf.

MR. POCCHIARI: Yes, but this was a *continuation*, the continuation of the problems that preceded this case. And I'll have you know, these--all these examples which I *brought here; documentation. It's not my word*, Your Honor.

THE COURT: *I haven't even looked at your documentation*, . . .

Appendix B.

STATE OF RHODE ISLAND

Leo Pocchiari	Supreme Court
vs	Providence, SC
Board of Regents, Et. Al.	Docket #91-0025
	CA 85-1562

MEMORANDUM

AFFIDAVIT IN SUPPORT OF DEFAULT MOTION AND ENTRY OF JUDGEMENT (2/20/91)

The appellant moves that the appellees be found in default and that a judgement be entered in the above-entitled cause.

It is the appellant's position that the appellees have failed to comply with court rules, violated state laws, violated stipulation agreement, rejected subpoena (Subpoena Duces Tecum). Not only have the appellees undermined the appellant's ability to prepare his case for trial but the appellees have followed a *pattern* of bad faith. These charges are based on documented evidence and are a matter of court record.

(1) The appellees have steadfastly refused to release essential records to the appellant. Most of these records have been requested many times.

(2) The appellees have refused to release records requested under a subpoena Duces Tecum. (10/6/87).

(3) The appellees have refused to release student records requested under a stipulation agreement despite iron-bound assurances that the appellant would protect the confidentiality of the records (8/21/86).

(4) Counsel for the appellees refused to forward a copy of the 5/1/90 judgement to the appellant until the appellant requested a copy in writing on two subsequent occasions. (5/1/90, 5/17/90).

(6) Appellees have violated a series of state laws as outlined in appellant's rule 16(h) brief and documented in Court records

(7) Dr. Earhart, Commissioner of Education, failed to make an appearance in Court on trial date (4/25/90). (Mr. Blackwell, School Principal, was sent instead).

This cause of action was filed in April, 1985. At this late date, nearly six years later, the appellees still have failed to comply with Court rules, stipulation agreement, and subpoena Duces Tecum. It is abundantly clear from the documented court records that the appellant has been deprived of his right to a fair trial.

Therefore, the appellant believes the appellees are in default and that entry of judgement is requested for the full amount sought in the amended complaint (9/17/86) and supplemental complaint (5/17/89).

Prepared by the Appellant-Plaintiff

Leo Pocchiari, Pro Se
92 Brown Street
Pawtucket, RI 02860
(401) 723-8696

CERTIFICATION

I hereby certify that a true copy of the within memorandum was mailed on February 21, 1991 to Forest Avila, Counsel of Record and Dr. Troy Earhart, Commissioner at 22 Hayes Street, Providence, RI 02908

_____

Leo Pocchiari

_____

/s/ Notary Public

February 20, 1991

Appendix C.

Supreme Court

No. 91-25-Appeal.

Leo Pocchiari :

v. :

Board of Regents et al. :

ORDER

On October 15, 1991, the plaintiff, Leo Pocchiari (Pocchiari), appeared before a panel of this court in response to an order to show cause why his appeal from a judgment entered in favor of the defendants in this dispute, to wit, the state Board of Regents, Commissioner J. Troy Earhart, Peter Blackwell, and Donald Driscoll, should not be summarily decided. Pocchiari has alleged that he had been harassed and intimidated by the defendants and as a result, his personal and professional reputation as an audiologist had been injured. He also claims he has suffered severe emotional distress as a result of these events.

The record indicateds that Pocchiari had been employed as an audiologist at the Rhode Island School for the Deaf. He was dismissed from that institution in 1978 but reinstated in 1981 with back pay after his grievance had been submitted to arbitration. At the time in question he was represented by the American Federation of Teachers, Local 2012.

Apparently the relationship between Pocchiari and his supervisors became a bit strained. He lodged numerous complaints with a variety of offices relative to the operation of the School for the Deaf and his treatment there. His complaints were directed to the Federal Office for Civil Rights, the State Commission for Human Rights, the Commissioner of Education, a former Rhode Island governor, members of Rhode island's congressional delegates, the Providence Human Relations Commission and others.

In April 1985 Pocchiari filed his complaint in this case at bar. In September 1986 he voluntarily resigned from his position.

At trial Pocchiari filed his complaint in the case at bar. In September 1986 he voluntarily resigned from his position.

At trial Pocchiari admitted that he had not followed the grievance procedure nor did he seek arbitration regarding his complaints about working conditions. The trial justice ruled that Pocchiari's failure to pursue his contractual remedies precluded him from bringing these claims to court.

When Pocchiari claimed injury to his reputation, the trial justice noted that Pocchiari had failed to show any objective loss to his reputation. Pocchiari acknowledged that he did not have a single witness who could testify about his reputation or how it was affected by the actions of defendants.

In *Evans* v. *Liguori*, 118 R.I. 389, 395, 374 A.2d 774, 777 (1977), we noted that expert medical testimony may be necessary to support a causation between alleged tortious acts and alleged injuries.

In Pocchiari's claim of injury to his reputation, it is difficult to determine whether this is a defamation claim in which he seeks damages for mental anguish or whether he is claiming injury to his reputation as an element of his intentional infliction of emotional distress claim. In either case, we believe that the

trial justice did not err in ruling that his allegations alone did not satisfy the burden of proof.

We are of the belief that Pocchiari has failed to show cause why his appeal should be sustained. Accordingly the defendant's appeal is denied and dismissed, the judgment of the Superior Court is affirmed and the case is remanded to the Superior Court.

Entered as an Order of this Court this 23d day of October 1991.

By Order,

_____

Matthew J. Smith
Clerk

Chief Justice Fay and Justice Shea did not participate.

Errata:

True copy of unpublished court opinion, line 4 incorrectly states "defendant's appeal is denied" and should read "plaintiff's appeal is denied".

Appendix D.

STATE OF RHODE ISLAND

Leo Pocchiari — Supreme Court

vs — Providence, SC

Board of Regents, Et. Al. — Docket #91-0025

CA 85-1562

Motion to Reargue Above Entitled Case

(November 20, 1991)

The appellant-plaintiff would like an opportunity to re-argue the above-entitled case.

It is the position of the appellant that all of the issues cited below failed to receive due consideration. Conversely, none of these issues were cited in the written opinion of the State Supreme Court, dated 10/23/91.

(1) The Superior Court trial of 4/25/90 was an exparte trial since Dr. Earhart, Commissioner of Education, failed to make a court appearance even though he was duly serviced by the Court.

Dr. Earhart failed to request that the case be continued and voluntarily elected to boycott the Superior Court trial. Under the circumstances, Public Law 1923, paragraph 5062 regarding exparte trial should be considered.

(2) Appellees failed to produce many documents in violation of court rules of discovery.

(a) Motion for production of documents, dated 6/4/86.

(b) Stipulation agreement, dated 8/21/86.

(c) Subpoena Duces Tecum, dated 10/6/87.

(3) Violation of various state laws as outlined in appellant's legal brief, date 1/31/91.

(4) Superior Court denied the appellant an opportunity to call witnesses.

(5) Superior Court denied the appellant an opportunity to submit extensive documented evidence.

(6) Opposing counsel fails to submit appellee's statement 16(h) in a timely fashion.

It is the appellant's position that the appellant failed to receive a fair trial in Superior Court and that the trial judge's errors did not receive due consideration in the State Supreme Court.

Therefore, the appellant respectfully requests that this case be re-argued in the State Supreme Court.

Prepared by the appellant-plaintiff.

_____

/s/ Leo Pocchiari, Pro Se
92 Brown Street
Pawtucket, RI 02860
(401) 723-8696

Certification

I hereby certify that a true copy of the within motion was mailed on November 21, 1991 to Forest Avila, Counsel of record and Dr. Baker, interim Commissioner of Education at 22 Hayes St., Providence, RI 02908

_____

/s/ Leo Pocchiari

Appendix E.

Supreme Court

No. 91-25-Appeal.

Leo Pocchiari :

v. :

Board of Regents et al. :

ORDER

The plaintiff's motion to reargue is denied.

Entered as an Order of this Court this 16th day of April, 1992.

By Order,

_____

Matthew J. Smith
Clerk

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

. . . . . .

Amendment 14

(Adopted July 28, 1868)

SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF STATE OF RHODE ISLAND.

ARTICLE I

Declaration Of Certain Constitutional Rights and Principles

Section Two

. . . . . .

No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

STATUTORY PROVISIONS.

§ 1401. Definitions

(a) As used in this title—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services.

. . . . . .

RHODE ISLAND GENERAL LAWS.

10-16-7. Judgment on default by defendant. — At the time set for the hearing, if the defendant does not appear to

answer and defend the claim, he may then, or thereafter as the court may order, be defaulted, and judgment entered against him in favor of the plaintiff for his claim, or so much thereof as the court may find to be justly due and owing, or that should be awarded to the plaintiff.

CHAPTER 31
GOVERNMENTAL TORT LIABILITY

9-31-1. Tort liability of state. — The state of Rhode Island and any political subdivision thereof, including all cities and towns, shall, subject to the period of limitations set forth in § 9-1-25, hereby be liable in all actions of tort in the same manner as a private individual or corporation; Provided, however, That any recovery in any such action shall not exceed the monetary limitations thereof set forth in the chapter.

CHAPTER 3
ARBITRATION

10-3-2. Agreements to arbitrate subject to chapter. — When clearly written and expressed, a provision in a written contract to settle arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two (2) or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

CHAPTER 11
CERTIFICATE OF TEACHERS

16-11-1. Certification of public school teachers required — Deductions from state aid for noncompliance. — No person shall be employed to teach, as principal or assistant, in any school supported wholly or in part by public money unless the person shall have a certificate of qualification issued by or under the authority of the state board of regents for elementary and secondary education.

. . . . . .

5-48-6. Licensure and regulation of speech pathologists and audiologists. —

. . . . . .

(B) No person shall practice or hold himself out as being able to practice speech pathology or audiology as defined in § 5-48-1 in this state unless he is licensed in accordance with the provisions of the laws of the state.

LAW OF CONFIDENTIALITY.

5-37-3. Definitions. — As used in this chapter:

. . . . . .

(c) "Confidential health care information" means all information relating to a patient's health care history, diagnosis, condition, treatment or evaluation obtained from a health care provider who has treated the patient.

. . . . . .

INTERCEPTION OF WIRE AND ORAL COMMUNICATION

12-5.1-2. Application for orders. — (a) The attorney general, or an assistant attorney general specially designated by the attorney general, may apply ex parte to the presiding justice of the superior court of competent jurisdiction for an order authorizing the interception of any wire or oral communications. Each application ex parte for such order must be in writing, subscribed and sworn to by the applicant.

(b) The application must contain:

(1) The identity of the officer making the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including: (i) details as to the particular designated offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which, or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought be be intercepted, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

. . . . . .

CHAPTER 52
COMPUTER CRIME

. . . . . .

11-52-3. Intentional access, alteration, damage or destruction. — Whoever intentionally and without authorization,

directly or indirectly accesses, alters, damages, or destroys any computer, computer system, computer network, computer software, computer program or data contained in such computer, computer system, computer program or computer network shall be guilty of a felony and shall be subject to the penalties set forth in § 11-52-4.

55. Default. — (a) *Entry*. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, ...

. . . . . .

(2) *By the Court*. In all other cases the party entitled to a judgment by default shall apply to the court. . .;

SUPERIOR COURT RULES OF CIVIL PROCEDURE

37. Refusal to make discovery — Consequences. —

. . . . . .

(b) *Failure to Comply With Order*.

. . . . . .

(2) *Other Consequences*. If any party or an officer or managing agent of the party refuses to obey an order made under subdivision (a) of this rule requiring him or her to answer designated questions or to make discovery under Rule 34, or an order under Rule 35, or if a party refuses to answer designated questions after his or her objections thereto under Rule 30 have been overruled by the court, the Court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental or blood condition sought to be examined, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

. . . . . .

ARTICLE II
JUDICIAL NOTICE

Rule 201. Judicial notice of adjudicative facts. —

. . . . . .

(e) *Opportunity to be Heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

. . . . . .

92-95

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LEO POCCHIARI,
PETITIONER,

v.

BOARD OF REGENTS, ET AL.,
RESPONDENTS.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

FORREST L. AVILA,
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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

Reasons for Denying the Writ.

This case was not an "ex parte" trial. Plaintiff Pocchiari was present at the trial as was counsel for the defendants, and the defendant principal of the Rhode Island School for the Deaf. Defendants are not aware of any rule of law which would require the Commissioner of Education of the State of Rhode Island to be physically in the courtroom at the time this matter went to trial.

Plaintiff Pocchiari was accorded discovery in this case. This discovery included depositions from the Commissioner of Education, the Principal of the Rhode Island School for the Deaf,

a secretary at the School for the Deaf, and depositions from two fellow audiologists. Defendants also answered interrogatories and produced numerous documents.

Plaintiff Pocchiari's problem was that he was not able to substantiate his allegations. Moreover, since Mr. Pocchiari's collective bargaining unit elected not to pursue his grievances, Mr. Pocchiari was barred from presenting them himself in court. *Belanger* v. *Matteson*, 115 R.I. 332, 346 A.2d 124.

Conclusion.

The Rhode Island Supreme Court did not err in dismissing the plaintiffs appeal.

Respectfully submitted,

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Supreme Court, U.S.
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No. 92-95

In the
Supreme Court of the United States

OCTOBER TERM, 1992

LEO POCCHIARI,
PETITIONER,

v.

BOARD OF REGENTS, ET AL.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO RHODE ISLAND STATE SUPREME COURT.

PETITIONER'S REPLY BRIEF IN OPPOSITION.

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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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Reply to Brief of Opposition.

This is a reply to the respondent's brief in which the petitioner would like to clarify and dispute several points.

Opposing counsel states that defendant, Dr. Troy Earhart, Commissioner of Education (now retired) did not need to be present at the trial in Superior Court (4/25/90). The fact is that Dr. Earhart was duly serviced by the Court and was the spokesman for the Board of Regents at the time. Dr. Earhart chose

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not to appear in Court. As a consequence, Mr. Peter Blackwell, Principal of the Rhode Island School for the Deaf, was asked to appear in his stead. Clearly, Mr. Blackwell, as School Principal, lacked the legal standing to speak for the Board of Regents. Therefore, in view of the fact Dr. Earhart elected to boycott the trial, it can justly be considered an "ex parte" trial.

On the matter of discovery, the defendant constantly refused to release numerous documents germane to this case. Many formal complaints were filed with the defendant and in Motion Court. This is a matter of record and not a matter of opinion. Therefore, the petitioner was denied the opportunity to fully prepare for trial.

It is also noteworthy that opposing counsel claims that docket number 92-95 was not used on his Brief of Opposition because Petitioner did not forward it to him. This assertion is completely without foundation as notice of docket number and Supreme Court appearance form were mailed to opposing counsel under a proof of mailing on July 20, 1992.

The petitioner would like to point out that the opposing counsel neglected to comment on two other matters in his Brief of Opposition:

(1) The petitioner was denied the opportunity to take the witness stand and testify in his own behalf nor was he permitted to call any witnesses to testify.

(2) The petitioner was also denied the opportunity to submit any documentary evidence in his behalf.

The petitioner was a member of the American Federation of Teachers, Rhode Island Federation of Teachers, Local 2012. During the petitioner's tenure at The School for the Deaf, all of the alleged misconduct of the School Administration were reported to the Union who did virtually nothing except to go through the motion, at times. It was clear to the petitioner that it would be left to him to seek a solution. As a result, the peti-

tioner opted to proceed on his own under article 12.2(e) of the Union Contract which states:

> "Nothing contained herein deprives an individual employee of the right to process his/her grievance under this Article without Union representation. If such grievance is processed without Union representation, the facts of said grievance will be furnished ot the Union"

The petitioner decided to take the matter into court rather than into arbitration for two reasons: (1) The union contract is silent as to whether a dispute should be taken into Court or into arbitration and, (2) There was a series of statutes that were broken which necessitated taking the case into Court rather than arbitration. (These are outlined in the Petitioner's Writ of Certiorari).

One of the laws violated by the School Administration, however, was the Teacher Certification Act (R.I. General Law 16-11-1) wherein the petitioner, who is a licensed audiologist, was forced to teach deaf and handicapped children 22 periods a week for one year. This occurred from early September 1981 to mid-June, 1982. This particular matter was reported to the Union many times. On September 21, 1981, the following note was received from the Grievance Chairman, Ray Velino:

> "I have contacted Edward Casey, Executive Secretary, RIFT, with regard to your request that contempt charges should be filed against the Board of Regents, and the management of the Department and the School for the Deaf, Mr. Casey contacted Richard A. Skolnik, Esq. to secure his legal opinion as to the possibility of

filing a contempt charge. It is Mr. Skolnik's legal opinion that there are no grounds for such action. I anticipate that this closes this matter."

Conclusion.

It is evident to the petitioner that he had a right to handle his own case and in view of the various laws that were broken, that the case was properly referred to a Court of law.

It is also clear to the petitioner that this was an "ex parte" trial and that his constitutional right to a fair trial was violated in a variety of ways.

As Government becomes more and more omnipresent in society, it is not unusual for it to subvert the rights of the average citizen, especially since the average person lacks the capacity to successfully challenge big government. The present case is one person's effort to reverse that trend and to protect individual rights which are guaranteed by the United States Constitution as well as the Rhode Island Constitution.

Respectfully submitted,

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August 20, 1992